UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LURADINE TIMBERLAKE, Plaintiff,	05 Civ. 5616 (LAP)
v.	MEMORANDUM and ORDER
NEW YORK PRESBYTERIAN HOSPITAL, Defendant.	

LORETTA A. PRESKA, Chief United States District Judge:

Plaintiff Luradine Timberlake brings this action against The New York and Presbyterian Hospital (the "Hospital")[1] alleging illegal employment discrimination and retaliation in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq.; Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq.; 42 U.S.C. § 1981 ("Section 1981"); New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law § 296; and N.Y. Labor Law § 741 ("Section 741"). The Hospital now moves for summary judgment on all claims. For the reasons enumerated below, the motion is GRANTED.

[1] The Complaint incorrectly identifies Defendant as "New York Presbyterian Hospital." (Affirmation of Counsel Steven M. Post in Support of Defendant's Motion for Summary Judgment, sworn to September 9, 2008, ("Post Aff."), ¶ 1).

I. BACKGROUND

A. Plaintiff's Employment

Unless otherwise indicated, the following facts are undisputed. Plaintiff is a 60 year-old African-American woman. (Plaintiff's 56.1 Statement of Material Facts in Dispute, ("Pl. 56.1 Stmt."), ¶ 1.) The Hospital hired her on June 12, 1972 as a staff nurse. (Id. at ¶ 2; Post Aff., Ex. 13, Deposition of Luradine Timberlake, taken February 27, 2006, ("Timberlake Feb. Dep."), 13:12-13:19.) From 1974 to her termination in 2004, she worked in the Hospital's ambulatory women's health practice. (Pl. 56.1 Stmt. ¶¶ 3, 34; Timberlake Feb. Dep. 20:6-21:6.)

The Practice Manager and her superior, the Director of Nursing, supervised Plaintiff. (Pl. 56.1 Stmt. ¶ 4; Timberlake Feb. Dep. 17:7-18:23.) Ellen Hawa, a Caucasian woman, served as the Practice Manager in 2002, and Yvonne Phipps, an African-American woman in her fifties, served as the Practice Manager from 2002 until 2003. (Pl. 56.1 Stmt. ¶¶ 6, 11; Timberlake Feb. Dep. 28:4-28:13, 29:22-29:24, 31:13-31:14.) Then, Patricia Deely, a Caucasian woman, served as Acting Practice Manager in the summer and fall of 2003. (Pl. 56.1 Stmt. ¶ 7; Timberlake Feb. Dep. 174:6-174:21.) After September 2003, Denise Strand, a Caucasian woman, worked as the Practice Manager. (Pl. 56.1 Stmt. ¶ 8;

Timberlake Feb. Dep. 27:22-27:24.)

Beryl Earle, an African-American woman in her fifties, served as Director of Nursing from 2002 until mid-2003. (Pl. 56.1 Stmt. ¶¶ 9, 11; Timberlake Feb. Dep. 30:8-30:25.) Thereafter, Gayle Kolt, a Caucasian woman in her late fifties, served as Director of Nursing. (Pl. 56.1 Stmt. ¶¶ 10-11; Timberlake Feb. Dep. 30:5-31:9.)

Plaintiff was one of three full-time staff nurses in the ambulatory women's health practice. (Pl. 56.1 Stmt. ¶ 12; Timberlake Feb. Dep. 26:19-27:18.) One of her colleagues, Eun Sook Cha, was a Korean woman older than Plaintiff. (Pl. 56.1 Stmt. ¶¶ 13, 16; Timberlake Feb. Dep. 26:25-27:6, 29:11-29:13, 31:23-31:24.) Her other colleague, Emma Doctor, was an African-American woman older than Plaintiff. (Pl. 56.1 Stmt. ¶¶ 14, 16; Timberlake Feb. Dep. 26:22-27:18, 32:3-32:10.)

Norma Robinson, an African-American woman a few years younger than Plaintiff, replaced Doctor after her retirement. (Pl. 56.1 Stmt. ¶¶ 15, 16.)

B. Plaintiff's Work Performance

The Hospital issued Plaintiff numerous warnings about her insubordination and deficient work performance. In March 2003, Earle issued a written warning to Plaintiff concerning her "inappropriate behavior" during a staff

meeting where she "became increasingly hostile, very aggressive tone [sic], and walked out of the meeting before the meeting was ended." (Pl. 56.1 Stmt. ¶¶ 17-18.) In September 2003, Deely issued a written warning to Plaintiff for failing to "follow unit based procedure regarding the tracking and communicating of lab results." (Id. at ¶ 21.) The next month, Strand issued an oral warning to Plaintiff for inappropriate behavior directed towards one of the Clinic's physicians. (Id. at ¶ 22.) In December 2003, Strand issued another written warning to Plaintiff for failing to follow the unit based procedure regarding the tracking and communicating of lab results. (Id. at ¶ 23.)

In February 2004, the Hospital issued Plaintiff her annual evaluation for the preceding year. (Id. at ¶ 24.) She received an overall rating of "Needs Improvement" and received poor marks for interpersonal relationships and communications with coworkers. (Id.) The Hospital also issued Plaintiff a Work Improvement Plan directing her to improve patient follow-up, reporting of patients' test results, and documentation of patient encounters and conversations with other healthcare providers. (Id. at ¶ 26; Post Aff., Ex. 6, Work Improvement Plan from Denise Strand to Plaintiff, dated February 10, 2004.) The Work Improvement Plan identified these deficiencies as

"previously discussed during various counseling sessions." (Post Aff., Ex. 6, Work Improvement Plan from Denise Strand to Plaintiff, dated February 10, 2004.) Moreover, the Work Improvement Plan indicated that it constituted a "warning" in accordance with the Hospital's disciplinary policy. (Id.)

Plaintiff admits that she did not disagree with the need for the Work Improvement Plan and that she had planned to "follow through" with the requisite corrections to her work performance. (Post Aff., Ex. 14, Deposition of Luradine Timberlake, taken March 22, 2006, ("Timberlake Mar. Dep."), 110:18-110:22.) However, less than one month after the Hospital issued the Work Improvement Plan, the Hospital suspended Plaintiff after she violated Hospital policy by dispensing medication without a physician's order. (Pl. 56.1 Stmt. ¶ 27.)

Plaintiff argues that several days prior to her suspension, agents of the Hospital discovered that she maintained a log of discriminatory and retaliatory incidents. (Id. at ¶ 29.) She further asserts that during the meeting concerning her suspension, she informed the Hospital that she was retaining legal counsel to combat what she believed was discrimination and retaliation; the Hospital denies this happened. (Id. at ¶ 28.)

While Plaintiff was serving her suspension, Hospital staff discovered unfiled patient laboratory reports and other treatment-related documents under her desk. (Id. at ¶ 29.) Approximately 30 of the 495 laboratory reports contained abnormal results requiring patient notification and physical follow-up. (Id. at ¶ 30.) Plaintiff disputes that the documents she held in her office were originals, and Plaintiff argues that she lacked an obligation to file them. (Id. at ¶¶ 29-33.) However, it is undisputed that when Plaintiff returned from her suspension, she refused to provide the Hospital with an explanation for the documents found under her desk. (Id. at ¶¶ 31-33.) The Hospital subsequently terminated Plaintiff's employment. (Id. at ¶ 34.)

Plaintiff initiated this action on June 15, 2005—within 90 days after she received a right to sue letter from the Equal Employment Opportunity Commission.

II. DISCUSSION

A. Summary Judgment Standard

The Hospital is entitled to summary judgment only "if the pleadings, depositions, answers to interrogatories, and the admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a

matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. Proc. 56(c)). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A fact is material if it "might affect the outcome of the suit under the governing law." Id. at 248. A dispute is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.; see Overton v. New York State Div. of Military & Naval Affairs, 373 F.3d 83, 89 (2d Cir. 2004).

To assess whether summary judgment is proper, the Court construes the evidence in the light most favorable to the non-moving party. Lucente v. IBM Corp., 310 F.3d 243, 253 (2d Cir. 2002). As movant, the Hospital bears the initial burden of providing the basis for the motion and identifying the evidentiary materials, if any, supporting its position. See Grady v. Affiliated Cent., Inc., 130 F.3d 553, 559 (2d Cir. 1997). Plaintiff must then "come forward with specific facts showing that there is a genuine issue for trial." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ.

P. 56(e)). Mere speculation and conjecture will not suffice. See Niagara Mohawk Power Corp. v. Jones Chem. Inc., 315 F.3d 171, 175 (2d Cir. 2002). Accordingly, "unsupported allegations do not create a material issue of fact." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000).

B. Analysis

1. Direct Discrimination

The Hospital is entitled to summary judgment on Plaintiff's direct age and race discrimination claims under Title VII, the ADEA, and the NYSHRL because she has not established a prima facie case of discrimination and, even if she had, the Hospital has introduced non-discriminatory reasons for the adverse employment actions which Plaintiff has not shown to be pretextual.[2] To establish a prima facie case of discrimination, Plaintiff must demonstrate that (i) she is a member of a protected class, (ii) she was qualified for her position, (iii) she suffered an adverse employment action, and (iv) the circumstances of the adverse action "give rise to an inference of

[2] As the state and federal discrimination claims are analytically similar, the Court will exercise supplemental jurisdiction over Plaintiff's NYHRL claims. See Wanamaker v. Columbian Rope Co., 108 F.3d 462, 467 (2d Cir. 1997); infra note 4.

discrimination." Weinstock, 224 F.3d at 42. Should she succeed, the burden shifts to the Hospital to "to articulate a legitimate, non-discriminatory reason for the adverse action." Id. If the Hospital satisfies this burden, the Hospital is entitled to summary judgment unless Plaintiff can demonstrate that the non-discriminatory explanation is merely a pretext for discrimination.[3] Id.; Ahmed v. N.Y.C. Health & Hosp. Corp., No. 08-2124, 2009 WL 1269579, at *1 (2d Cir. May 8, 2009) (affirming grant of summary judgment in favor of defendant-employer, noting "[t]he ultimate burden of persuasion is always on the plaintiff, who must demonstrate that the employer's action was prompted by an impermissible motive"); Marlo v. P&C Food Mkts., 313 F.3d 758, 767 (2d Cir. 2002).

Here, Plaintiff has failed to demonstrate circumstances giving rise to an inference of discrimination. She offers nothing more than her own personal belief and speculation that impermissible motives

[3] The burden-shifting framework for a Title VII direct discrimination claim applies to claims under the ADEA, Section 1981, and the NYSHRL. See Wellesley v. Debevoise & Plimpton LLP, No. 08-1360, 2009 WL 3004102, at *1 (2d Cir. Sept. 21, 2009) (applying framework to an ADEA claim); Jenkins v. NYC Transit Auth., 201 Fed. Appx. 44, 45 (2d Cir. 2006) (applying framework to a Section 1981 claim); Torres v. Pisano, 116 F.3d 625, 629 n.1 (2d Cir. 1997) (applying framework to a NYHRL claim).

prompted the Hospital's actions. She presents, and the record reveals, no evidence that the Hospital's treatment of her differed from that accorded to employees outside of protected classes, that the Hospital departed from its general policies when discharging her, or that employees outside of protected classes who acted similarly were not terminated. Plaintiff's speculation and conclusory statements of opinion are simply insufficient to defeat the Hospital's summary judgment motion. See Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997); Smith v. Am. Express Co., 853 F.2d 151, 154-55 (2d Cir. 1988).

Furthermore, assuming arguendo that Plaintiff had established a prima facie case, she has made no attempt to show that the Hospital's non-discriminatory reasons for taking disciplinary action against her were pretextual. To the contrary, rather than introducing facts to support her discrimination claims, Plaintiff has done exactly the opposite; she has admitted valid, non-discriminatory reasons for her termination. The record contains an uncontroverted picture of a problematic employment history replete with incidents of insubordination and defiance. For example, less than one month after receiving the Work Improvement Plan, a written warning Plaintiff agreed with, Plaintiff dispensed medication without a physician's order.

(Pl. 56.1 Stmt. ¶¶ 26-27.) While serving the ensuing suspension, the Hospital discovered that Plaintiff maintained patient-related Hospital records in a box under her desk. (Id. at ¶¶ 29-33.) Regardless of whether the documents were originals or photocopies, and even assuming Plaintiff lacked any obligation to file the documents, her refusal to account for her hoard of Hospital records coupled with her prior incidents of deficient performance undoubtedly justified her termination. See Abdu-Brisson v. Delta Air Lines, Inc., 239 F.3d 456, 470 (2d Cir. 2001); Ahmed v. N.Y.C. Health & Hosp. Corp., No. 06-6685, 2008 WL 918830, at *7 (S.D.N.Y. Mar. 31, 2008), aff'd, No. 08-2124, 2009 WL 1269579, at *1 (2d Cir. May 8, 2009); O'Day v. McDonnell Douglas Helicopter Co., 79 F.3d 756, 722 (9th Cir. 1996) (determining that employee's unauthorized taking of employer's documents—even if gathered to preserve evidence for a discrimination suit—justified employee's discharge). Accordingly, Plaintiff's direct discrimination claims fail as a matter of law.

2. Retaliation for Opposition to Age and Race Discrimination

To establish a prima facie case of retaliation, Plaintiff must show that (i) she engaged in a protected activity, (ii) the Hospital knew of the activity, (iii) she

suffered an adverse employment action, and (iv) a causal connection exists between the protected activity and the adverse employment action. See Richardson v. Comm'n on Human Rights & Opportunities, 532 F.3d 114, 123 (2d Cir. 2008) (citing Quinn v. Green Tree Credit Corp., 159 F.3d 759, 769 (2d Cir. 1998)); Reed v. A.W. Lawrence & Co., Inc., 95 F.3d 1170, 1178 (2d Cir. 1996) (citing Manoharan v. Columbia Univ. Coll. of Physicians & Surgeons, 842 F.2d 590, 593 (2d Cir. 1988)). If Plaintiff makes a prima facie case of retaliation, the burden shifts to the Hospital to provide a legitimate, nondiscriminatory reason for its actions, which she must then show to be pretextual. See Jute v. Hamilton Sundstrand Corp., 420 F.3d 166, 173 (2d Cir. 2005).

Plaintiff's retaliation claims fail as a matter of law. When asked whether she had ever made any complaint to the Hospital of being treated differently because of her age, Plaintiff did not answer affirmatively. Instead, she pointed to a single reference she wrote in a March 2003 memo that she was a "senior nurse on this unit (30+ years)" and a complaint to Strand about a coworker looking up Plaintiff's nursing license on the computer. (Timberlake Feb. Dep. 103:8-104:8; 124:15-13.) These could hardly be construed as discrimination complaints, and no reasonable

trier of fact would infer that the Hospital knew or should have known from these references that Plaintiff was complaining about age discrimination. See McDowell v. T-Mobile USA, Inc., 307 Fed. Appx. 531, 534 (2d Cir. 2009); Wimes v. Health, 157 Fed. Appx. 327, 328 (2d Cir. 2005); Galderi-Ambrosina v. Nat'l Realty & Dev. Corp., 136 F.3d 276, 292 (2d Cir. 1998) ("[I]mplicit in the requirement that the employer have been aware of the protected activity is the requirement that it understood, or could reasonably have understood, that the plaintiff's opposition was directed at conduct prohibited by [the statute].").

Plaintiff testified that the only written complaint she made to the Hospital concerning purported racial discrimination was on an anonymous survey. (Timberlake Feb. Dep. 28:4-28:13.) As Plaintiff conducted this opposition anonymously, the Hospital could not have known that Plaintiff herself engaged in the protected activity.

Plaintiff's strongest potential case for retaliation arises in connection with her statement that she intended to hire an attorney to vindicate what she believed to be discriminatory treatment and the Hospital's discovery of a log chronicling such treatment. Assuming without deciding that this establishes a prima facie case of retaliation, the Hospital is still entitled to summary judgment with

respect to this and everything else Plaintiff alleges. As discussed in the foregoing analysis of Plaintiff's direct discrimination claims, she presented no evidence from which to infer that the Hospital's reasons for reprimanding her and ultimately terminating her employment were pretext. Consequently, any retaliation claim fails as a matter of law.

3. Retaliation for Objecting to Improper Quality of Patient Care

Plaintiff also alleges a violation of Section 741, which prohibits retaliation against healthcare providers that disclose or object to improper quality of patient care.[4] Plaintiff asserts that she complained about the Hospital's policy of rescheduling patients who arrive more than thirty minutes late to their appointments and other "departures from the standard duty of medical care owed to . . . patients." (Complaint ¶ 5.)

[4] This court will exercise supplemental jurisdiction over Plaintiff's state claims. In making this determination, the Court has assessed judicial economy, convenience, fairness, and comity. The parties have taken numerous depositions, and the Court has substantial familiarity with the merits of the case through many hours devoted to reviewing the parties' memoranda, the attached exhibits, and the record. Additionally, the Hospital's defense of the federal claims provides a defense to all of the state claims based upon well-settled principles of state law. See Dellefave v. Access Temporaries, Inc., 37 Fed. Appx. 23, 26 (2d Cir. 2002); Mauro v. S. New England Telecomm., Inc., 208 F.3d 384, 388 (2d Cir. 2000).

For Section 741 to apply, the improper quality of patient care must concern a "practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law" and the violation must relate to "matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient." N.Y. Labor Law § 741(1)(d).

Plaintiff's claim fails because she has not introduced any evidence showing that Section 741 applies. First, she has not identified any law, rule, regulation or declaratory ruling she reasonably believed the Hospital violated. See Deshpande v. TJH Med. Servs., P.C., 861 N.Y.S.2d 697, 699-700 (App. Div. 2d Dep't 2008). Second, none of the purported departures from the standard duty of care were shown to present the requisite degree of substantial or significant danger to fall within the ambit of Section 741. See United States ex rel. Smith v. N.Y. Presbyterian Hosp., No. 06-4056, 2007 WL 2142312, at *14 (S.D.N.Y. July 18, 2007).

Even if Section 741 applied, the Hospital has offered ample evidence indicating that the decisions to reprimand Plaintiff and ultimately terminate her employment were based on her insubordination and deficient performance.

Since Section 741 provides that "it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section," N.Y. Labor Law § 741(5), Plaintiff's Section 741 claim fails.

III. CONCLUSION

For the foregoing reasons, the Hospital's motion for summary judgment [dkt. no. 19] is GRANTED.

The Clerk of the Court shall mark this action closed and all pending motions denied as moot.

SO ORDERED

Dated: New York, New York

September 29, 2009

Loretta A Preska

LORETTA A. PRESKA, Chief U.S.D.J.